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obliged to have recourse to it in order to counteract the unrestrained play of "natural" forces, is not necessarily in antagonism to them, and may frequently operate only to accelerate or facilitate their action. Mr. Ritchie strengthens his general argument by specific illustrations, and concludes by showing how desirable it is that conscious effort should take the shape of positive legal institutions, partly because they are necessary to give effect to opinion, partly because of their educative value. The educational influence of institutions is usually overlooked by those evolutionists who magnify the force of heredity. The discussion that is now going on as to whether acquired characteristics are ever transmitted by descent tends, as Mr. Ritchie remarks, to weaken the claim of heredity as the preponderating element in the formation of character.

W. J. ASHLEY.

The Primitive Family. By C. N. STARCKE, Ph.D., of the University of Copenhagen. New York, D. Appleton & Co., 1889. — 315 pp.

Die Indogermanischen Verwandtschaftsnamen. Ein Beitrag zur vergleichenden Alterthumskunde. Von BERTHOLD DELBRÜCK. [Abhandlungen der philologisch-historischen Classe der Kgl. Sächs. Gesellschaft der Wissenschaften. Bd. xi, No. 5.] Leipzig, S. Hirzel, 1889. — 228 pp.

In publishing an English translation of Dr. Starcke's *Die primitive Familie in ihrer Entstehung und Entwicklung* (Leipzig, 1888), the Appleton's have rendered a service to English and American students. In the first place, the book gives an extensive collection of facts and a useful review of theories. Besides this, it contains much suggestive criticism and some original points of view. Its field is wider than its title: it treats not merely of the family, but of kinship and of the organization of the clan and tribe.

From Dr. Starcke's point of view (as from Morgan's) it is not the family but the clan which determines primitive kinship. The bond of the clan is community of blood; the family is based upon a mixture of blood. Whether kinship shall be traced through the male line or through the female depends, therefore, rather upon the organization of the clan than upon that of the family. If the wife enters the husband's clan, we shall find agnatic kinship; if the husband joins the wife's, we shall find *Mutterrecht*. The prevalent and persistent tendency is in the former direction, towards father-right; and father-right seems to develop somewhat as follows. Clans tend to become exogamous because, according to Dr. Starcke, the man who captures a wife from a neighboring clan avoids all interference with the established family relations

of his own clan. It might be added that it is cheaper to steal a wife than to buy one; and that in primitive society capture is the most respectable means of acquiring property. With wife-capture arises the idea of property-right in the wife, and in the children born of the wife; and this property-right is the basis of father-right and of agnatic kinship. In marriage by purchase, the basis of the husband's and father's right is the same. This, I take it, is what Dr. Starcke means by saying that fatherhood does not rest originally on the fact of procreation, but is essentially "juridical" (pages 121-127); but I am not altogether sure that I understand his line of reasoning. In other passages (*e.g.* on page 37) he seems to distinguish a primitive paternal authority based on pure force, and a later father-right, of a legal character, not based on force at all. But he may mean only that in the development of paternal authority, as in the development of all property rights, there is an earliest stage in which the social sanction has not yet converted force into right.

Society also tends, from the earliest period, to monogamy. Polygamy can never be general, because the number of women is never greatly in excess of the number of men. Polyandry Dr. Starcke regards as sporadic, rejecting McLennan's theories. He also rejects the theory that there is any necessary connection between the levirate or the *niyoga* and polyandry. So far his views coincide with those of most writers. But Dr. Starcke goes further: he rejects entirely the theory of primitive hetairism or promiscuity, and the derivation of mother-right from the impossibility of determining fatherhood. He disputes the priority of mother-right. Explaining mother-right on "residential" grounds, he tries to show that a community originally agnatic may change its habits and derive relationship entirely through the female line. In a cattle-breeding community, for instance, men make it their first object to increase the number of stock. In such a community the head of the family will sell his daughter as early and for as high a price as possible. In the agricultural community, on the other hand, the chief demand is for labor. In such a community, the head of the house will not only oppose the departure of his daughter; he will seek to induce her wooer to become one of his household. Hence the herding community will recognize agnatic kinship only, while mother-right will appear with the development of agriculture (pages 99, 100). This argument seems to me singularly fallacious. It bases the probability of wife-purchase entirely on the willingness of the woman's father to sell. But it takes two to make a bargain; and it may be insisted, with more reason, that the development of wife-purchase will depend on the desire of the wooer to buy. If this point of view be accepted, Dr. Starcke's data afford a conclusion directly opposed to that which he reaches. The herding community will maintain mother-right, because the man does not care

to purchase a wife ; but in the agricultural community, where labor is the prime requisite, the man who cannot steal a wife from a neighboring and hostile community will buy one within the tribe as soon as he is able.

Dr. Starcke's whole attack upon the theory of primitive mother-right seems to me inconclusive. He unquestionably shows that mother-right may exist, on "residential" grounds, when fatherhood is not uncertain. But surely an institution which has arisen on one ground may persist on another. He unquestionably shows that father-right may exist on "juridical" grounds (*i.e.* as a property right), when the customs of the community are such as to render paternity anything but certain ; and he insists that if father-right does not rest primarily upon procreation, mother-right can never have rested upon the uncertainty of the father. This does not seem to me a necessary inference. He further endeavors to show that the *couvade* — which may be best described as the "confinement" of the husband — does not point to primitive mother-right or represent an attempt to find an analogous basis for father-right (pages 51, 52). Here again Dr. Starcke gives reasons which might account for the persistence of the institution, but which seem inadequate to explain its origin. His statement that the Arowaks and Macusis, who practise the *couvade*, have the system of exclusive maternal kinship, is not borne out by the data he furnishes on pages 37, 38.

All Dr. Starcke's conclusions on this point are conditioned by certain premises which are hardly likely to command general acceptance. According to his canons, we should never seek the origin of a custom in primitive conditions if its existence is explicable under contemporaneous conditions. He is disinclined to reason back from symbols to earlier realities and from fictions to primitive facts.

Dr. Delbrück's study of *Indo-Germanic Kinship Names* is a work of narrower scope than Dr. Starcke's, but certainly of no less value. The bulk of the treatise is purely philological, but in the last forty-five pages (*Sachlicher Theil*) the author sums up his conclusions. The ancient Aryan system, he thinks, is strictly agnatic. In the oldest literature of India the father's brother plays a more important part than the mother's brother. There is no philological evidence that polyandry was customary. There is no philological evidence of primitive promiscuity and resultant mother-right. On the other hand, the philological evidence does not, and cannot, disprove the mother-right theory. If the anthropological arguments in favor of that theory be deemed conclusive, all that the philologist can say is that the Indo-Germanic peoples seem to have emerged from promiscuity and mother-right before that period in their development with which Indo-Germanic philology deals. Dr. Delbrück's conclusions are largely identical with those of Dr. Edward Washburn Hopkins, whose treatise on the *Ruling Castes in Ancient India* he

repeatedly cites. In praising the work of Dr. Hopkins, Dr. Delbrück pays a graceful compliment to American scholarship: Dr. Hopkins, he says, has treated his immense mass of material "mit amerikanischer Genauigkeit und Uebersichtlichkeit."

MUNROE SMITH.

Notes pour servir à l'Histoire littéraire et dogmatique du Droit International en Angleterre. Par ERNEST NYS, professeur à l'Université de Bruxelles. Première partie, Bruxelles, 1888. — 148 pp.

This is the first part of a work intended, as indicated by the title, to serve as a literary and dogmatic history of international law in England. While the term international law implies the existence of a general system of conduct, recognized and applied by all nations alike, yet we find in the history of each independent state something of especial interest in the development of particular doctrines. The work of Professor Nys, so far as published, does not attempt an exposition of the relations of England with other powers. It purports merely to show, under certain heads, the practices prevailing in that country, especially where they disclose either a simple difference from rules followed in other countries, or a contribution to the progressive development of international law. It is observed that during the second half of the middle ages, two questions which strongly affected the development of international law on the continent had comparatively little effect in England. These were the questions of the Church and the Empire. It was not through lack of effort on the part of the Church to bring the English people effectually under her dominion that they retained their independent position. During considerable periods of time the authority of the Pope was exerted, with a success often varying with the temper and disposition of the reigning prince. But the national spirit of the people was so strong that any concessions which were obtained served in the end only to cause a more emphatic assertion of independence.

The development of international doctrines in England was influenced far more by the civil than by the canon law. As the authority of the latter declined, that of the former, though for a time obscured, gradually took its place and increased. Aycliffe, in his history of the University of Oxford, referring to the condition of things about the middle of the sixteenth century, says that "the books of civil and canon law were set aside to be devoured with worms as savouring too much of popery." In 1536, Thomas Cromwell, as Chancellor of the University of Cambridge, enjoined that "no one should thereafter publicly read the canon law, nor should any degree in that law be conferred." A similar injunction was proclaimed as to Oxford. But although the civil law, be-